

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 387

BY LOCAL GOVERNMENT COMMITTEE

AN ACT

RELATING TO REVENUE AND TAXATION; AMENDING SECTION 63-602G, IDAHO CODE, TO PROVIDE THAT A HOMESTEAD HAVING PREVIOUSLY QUALIFIED FOR EXEMPTION SHALL NOT LOSE SUCH QUALIFICATION DUE TO THE OWNER'S ABSENCE FOR CERTAIN REASONS, TO PROVIDE THAT A CERTAIN EXEMPTION SHALL NOT BE IMPAIRED FOR CERTAIN REASONS, TO PROVIDE THAT A CERTAIN EXEMPTION SHALL FAIL FOR CERTAIN REASONS, TO PROVIDE THAT THE OWNER OF A HOMESTEAD PREVIOUSLY QUALIFIED FOR EXEMPTION IS NOT REQUIRED TO MAKE A SEPARATE APPLICATION TO CONTINUE QUALIFICATION OF THE EXEMPTION DURING THE TIME OF MILITARY, HUMANITARIAN OR RELIGIOUS SERVICE, TO PROVIDE FOR NOTICE, TO PROVIDE THAT SUCH NOTICE SHALL IDENTIFY CERTAIN MATTERS, TO PROVIDE FOR A DECLARATION, TO PROVIDE FOR A FILING, TO PROVIDE FOR A REBUTTABLE PRESUMPTION, TO ESTABLISH PROVISIONS RELATING TO A REFUND, TO PROVIDE FOR A CONTESTED CASE, TO PROVIDE FOR INTEREST AND TO PROVIDE THAT THE BOARD OF COUNTY COMMISSIONERS SHALL REFUND CERTAIN TAXES IN CERTAIN INSTANCES; AND AMENDING SECTION 63-701, IDAHO CODE, TO PROVIDE FOR APPLICATION OF LAW.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-602G, Idaho Code, be, and the same is hereby amended to read as follows:

63-602G. PROPERTY EXEMPT FROM TAXATION -- HOMESTEAD. (1) During the tax year 2006 and each year thereafter, subject to annual adjustment as provided herein, the first seventy-five thousand dollars (\$75,000) of the market value for assessment purposes of the homestead as that term is defined in section 63-701, Idaho Code, or fifty percent (50%) of the market value for assessment purposes of the homestead as that term is defined in section 63-701, Idaho Code, whichever is the lesser, shall be exempt from property taxation. Beginning for tax year 2007, the state tax commission shall publish adjustments to the maximum amount subject to property tax exemption to reflect cost-of-living fluctuations. The adjustments shall effect changes in the amount subject to tax exemption by a percentage equal as near as practicable to the annual change in the Idaho housing price index as determined by the United States office of federal housing enterprise oversight. The state tax commission shall publish the adjustments required by this subsection each and every year the office of federal housing enterprise oversight announces a change in the Idaho housing price index. The adjustments shall be published no later than October 1 of each year and shall be effective for claims filed in and for the following property tax year. The publication of adjustments under this subsection shall be exempt from the provisions of chapter 52, title 67, Idaho Code, but shall be provided to each county and to members of the public upon request and without charge.

(2) The exemption allowed by this section may be granted only if:

1 (a) The homestead is owner-occupied and used as the primary dwelling
2 place of the owner as of January 1, provided that in the event the home-
3 stead is owner-occupied after January 1 but before April 15, the owner
4 of the property is entitled to the exemption. The homestead may consist
5 of part of a multidwelling or multipurpose building and shall include
6 all of such dwelling or building except any portion used exclusively for
7 anything other than the primary dwelling of the owner. The presence of
8 an office in a homestead, which office is used for multiple purposes,
9 including business and personal use, shall not prevent the owner from
10 claiming the exemption provided in this section; and

11 (b) The tax commission has certified to the board of county commission-
12 ers that all properties in the county which are subject to appraisal by
13 the county assessor have, in fact, been appraised uniformly so as to se-
14 cure a just valuation for all property within the county; and

15 (c) The owner has certified to the county assessor by April 15 that:

16 (i) He is making application for the exemption allowed by this
17 section;

18 (ii) That the homestead is his primary dwelling place; and

19 (iii) That he has not made application in any other county for the
20 exemption, and has not made application for the exemption on any
21 other homestead in the county.

22 (d) For the purpose of this section, the definition of "owner" shall be
23 the same definition set forth in section 63-701(7), Idaho Code.

24 When an "owner," pursuant to the provisions of section 63-701(7),
25 Idaho Code, is any person who is the beneficiary of a revocable or irrev-
26 ocable trust, or who is a partner of a limited partnership, a member of
27 a limited liability company, or shareholder of a corporation, he or she
28 may provide proof of the trust, limited partnership, limited liability
29 company, or corporation in the manner set forth in section 63-703(4),
30 Idaho Code.

31 (e) Any owner may request in writing the return of all copies of any
32 documents submitted with the affidavit set forth in section 63-703(4),
33 Idaho Code, that are held by a county assessor, and the copies shall
34 be returned by the county assessor upon submission of the affidavit in
35 proper form.

36 (f) For the purpose of this section, the definition of "primary
37 dwelling place" shall be the same definition set forth in section
38 63-701(8), Idaho Code.

39 (g) For the purpose of this section, the definition of "occupied" shall
40 be the same definition set forth in section 63-701(6), Idaho Code.

41 (3) An owner need only make application for the exemption described in
42 subsection (1) of this section once, as long as all of the following condi-
43 tions are met:

44 (a) The owner has received the exemption during the previous year as a
45 result of his making a valid application as defined in subsection (2) (c)
46 of this section.

47 (b) The owner or beneficiary, partner, member or shareholder, as appro-
48 priate, still occupies the same homestead for which the owner made ap-
49 plication.

1 (c) The homestead described in subsection (3)(b) of this section is
2 owner-occupied or occupied by a beneficiary, partner, member or share-
3 holder, as appropriate, and used as the primary dwelling place of the
4 owner or beneficiary, partner, member or shareholder, as appropriate,
5 as of January 1; provided however, that in the event the homestead is
6 owner-occupied after January 1, but before April 15, the owner of the
7 property is entitled to the exemption.

8 (4) The exemption allowed by this section must be taken before the re-
9 duction in taxes provided by sections 63-701 through 63-710, Idaho Code, is
10 applied.

11 (5) Recovery of property tax exemptions allowed by this section but im-
12 properly claimed or approved:

13 (a) Upon discovery of evidence, facts or circumstances indicating any
14 exemption allowed by this section was improperly claimed or approved,
15 the county assessor shall decide whether the exemption claimed should
16 have been allowed and if not, notify the taxpayer in writing, assess
17 a recovery of property tax and notify the county treasurer of this
18 assessment. If the county assessor determined that an exemption was
19 improperly approved as a result of county error, the county assessor
20 shall present the discovered evidence, facts or circumstances from the
21 improperly approved exemption to the board of county commissioners, at
22 which time the board may waive a recovery of the property tax and notify
23 such taxpayer in writing.

24 (b) When information indicating that an improper claim for the exemp-
25 tion allowed by this section is discovered by the state tax commission,
26 the state tax commission may disclose this information to the ap-
27 propriate county assessor, board of county commissioners and county
28 treasurer. Information disclosed to county officials by the state tax
29 commission under this subsection may be used to decide the validity of
30 any entitlement to the exemption provided in this section and is not
31 otherwise subject to public disclosure pursuant to chapter 3, title 9,
32 Idaho Code.

33 (c) The assessment and collection of the recovery of property tax must
34 begin within the seven (7) year period beginning the date the assessment
35 notice reflecting the improperly claimed or approved exemption was re-
36 quired to be mailed to the taxpayer.

37 (d) The taxpayer may appeal to the board of county commissioners the
38 decision by the county assessor to assess the recovery of property tax
39 within thirty (30) days of the date the county assessor sent the notice
40 to the taxpayer pursuant to this section. The board may waive the col-
41 lection of all or part of any costs, late charges and interest, in order
42 to facilitate the collection of the recovery of the property tax.

43 (e) For purposes of calculating the tax, the amount of the recovered
44 property tax shall be for each year the exemption allowed by this sec-
45 tion was improperly claimed or approved, up to a maximum of seven (7)
46 years. The amount of the recovery of property tax shall be calculated
47 using the product of the amount of exempted value for each year multi-
48 plied by the levy for that year plus costs, late charges and interest for
49 each year at the rates equal to those provided for delinquent property
50 taxes during that year.

(f) Any recovery of property tax shall be due and payable no later than the date provided for property taxes in section 63-903, Idaho Code, and if not timely paid, late charges and interest, beginning the first day of January in the year following the year the county assessor sent the notice to the taxpayer pursuant to this section, shall be calculated at the current rate provided for property taxes.

(g) Recovered property taxes shall be billed, collected and distributed in the same manner as property taxes, except each taxing district or unit shall be notified of the amount of any recovered property taxes included in any distribution.

(h) Thirty (30) days after the taxpayer is notified, as provided in subsection (5) (a) of this section, the assessor shall record a notice of intent to attach a lien. Upon the payment in full of such recovered property taxes prior to the attachment of the lien as provided in subsection (5) (i) of this section, or upon the successful appeal by the taxpayer, the county assessor shall record a rescission of the intent to attach a lien within seven (7) business days of receiving such payment or within seven (7) business days of the county commissioners' decision granting the appeal. If the real property is sold to a bona fide purchaser for value, prior to the recording of the notice of the intent to attach a lien, the county assessor and treasurer shall cease the recovery of such unpaid recovered property tax.

(i) Any unpaid recovered property taxes shall become a lien upon the real property in the same manner as provided for property taxes in section 63-206, Idaho Code, except such lien shall attach as of the first day of January in the year following the year the county assessor sent the notice to the taxpayer pursuant to this section.

(j) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this subsection as recovery of property tax shall be treated as property tax revenue.

(6) The legislature declares that this exemption is necessary and just.

(7) (a) A homestead, having previously qualified for exemption under this section in the preceding year, shall not lose such qualification due to: the owner's, beneficiary's, partner's, member's or shareholder's absence in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the Internal Revenue Code, or any branch of the United States armed services, or during temporary humanitarian or religious service with a sponsoring organization. "Temporary service" is service not exceeding thirty-six (36) months from the last occupancy by the owner.

(b) Notwithstanding any provisions to the contrary, the retention of the homestead exemption provided under this subsection shall not be impaired because the homestead has been leased because the owner, beneficiary, partner, member or shareholder is absent in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the Internal Revenue Code or costs of utilities or maintenance have been paid by others.

(c) The homestead exemption during military, temporary humanitarian or religious service shall fail if the owner declares another location as their primary dwelling place, or obtains any homestead exemption for a

different location, or if it is otherwise established after notice and hearing before the board of county commissioners or designated hearing officer that the owner has in fact changed primary dwelling places or does not intend to continue the homestead as the primary dwelling place.

(d) The owner of a homestead previously qualified for exemption is not required to make a separate application to continue qualification of the homestead exemption during the time of military, temporary humanitarian or religious service. An owner may file with the county assessor a notice of military, temporary humanitarian or religious service. Such notice shall identify the property subject to the homestead exemption, the nature of service causing the absence, the military unit or sponsoring organization, the dates of anticipated service and return, a contact address during absence, and a declaration that the owner intends to continue use of the homestead as the owner's primary dwelling place. Such notice filed with the assessor shall create a rebuttable presumption of the facts stated in the declaration.

(e) Taxes, penalties and interest erroneously assessed and collected during qualified military, temporary humanitarian or religious service shall be refunded to the owner within ninety (90) days of an application for refund request by the owner, unless disputed by the county assessor, in which case the matter shall be processed as a contested case. If a notice of military, temporary humanitarian or religious service has been filed before the assessment notice date for paying assessed taxes, any overpayment shall be refunded with interest from the date of collection on all amounts erroneously assessed and collected. For purposes of this paragraph, interest shall be at the rate provided for in section 63-1001, Idaho Code.

(f) If an owner fails to timely apply for a homestead exemption as required in this section solely by reason of the owner's active duty in a designated combat zone ~~by the owner, beneficiary, partner, member or shareholder, as appropriate,~~ as defined in section 112 of the Internal Revenue Code, and such homestead would have otherwise qualified ~~under this section~~ for homestead exemption, then the board of county commissioners of the county in which the homestead is located shall refund property taxes, if previously paid, in an amount equal to the exemption which would otherwise have applied.

SECTION 2. That Section 63-701, Idaho Code, be, and the same is hereby amended to read as follows:

63-701. DEFINITIONS. As used in this chapter:

(1) "Claimant" means a person who has filed an application under section 63-602G, Idaho Code, and has filed a claim under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1, or before April 15, of the year in which the claimant first filed a claim on the homestead in question, a claimant must be an owner of the homestead and on January 1 of said year a claimant must be:

(a) Not less than sixty-five (65) years old; or

1 (b) A child under the age of eighteen (18) years who is fatherless or
 2 motherless or who has been abandoned by any surviving parent or parents;
 3 or

4 (c) A widow or widower; or

5 (d) A disabled person who is recognized as disabled by the social se-
 6 curity administration pursuant to title 42 of the United States Code,
 7 or by the railroad retirement board pursuant to title 45 of the United
 8 States Code, or by the office of management and budget pursuant to title
 9 5 of the United States Code; or

10 (e) A disabled veteran of any war engaged in by the United States, whose
 11 disability is recognized as a service-connected disability of a degree
 12 of ten percent (10%) or more, or who has a pension for nonservice-con-
 13 nected disabilities, in accordance with laws and regulations adminis-
 14 tered by the United States department of veterans affairs; or

15 (f) A person, as specified in 42 U.S.C. 1701, who was or is entitled
 16 to receive benefits because he is known to have been taken by a hostile
 17 force as a prisoner, hostage or otherwise; or

18 (g) Blind.

19 (2) "Homestead" means the dwelling, owner-occupied by the claimant
 20 as described in this chapter and used as the primary dwelling place of the
 21 claimant and may be occupied by any members of the household as their home,
 22 and so much of the land surrounding it, not exceeding one (1) acre, as is
 23 reasonably necessary for the use of the dwelling as a home. It may consist
 24 of a part of a multidwelling or multipurpose building and part of the land
 25 upon which it is built. "Homestead" does not include personal property such
 26 as furniture, furnishings or appliances, but a manufactured home may be a
 27 homestead.

28 (3) "Household" means the claimant and the claimant's spouse. The term
 29 does not include bona fide lessees, tenants, or roomers and boarders on con-
 30 tract. "Household" includes persons described in subsection (8) (b) of this
 31 section.

32 (4) "Household income" means all income received by the claimant and,
 33 if married, all income received by the claimant's spouse, in a calendar year.

34 (5) "Income" means the sum of federal adjusted gross income as defined
 35 in the Internal Revenue Code, as defined in section 63-3004, Idaho Code, and
 36 to the extent not already included in federal adjusted gross income:

37 (a) Alimony;

38 (b) Support money;

39 (c) Nontaxable strike benefits;

40 (d) The nontaxable amount of any individual retirement account, pen-
 41 sion or annuity, (including railroad retirement benefits, all payments
 42 received under the federal social security act except the social secu-
 43 rity death benefit as specified in this subsection, state unemployment
 44 insurance laws, and veterans disability pensions and compensation, ex-
 45 cluding any return of principal paid by the recipient of an annuity and
 46 excluding rollovers as provided in section 402 or 403 of the Internal
 47 Revenue Code);

48 (e) Nontaxable interest received from the federal government or any of
 49 its instrumentalities or a state government or any of its instrumental-
 50 ities;

1 (f) Worker's compensation; and

2 (g) The gross amount of loss of earnings insurance.

3 It does not include gifts from nongovernmental sources or inheritances.
 4 To the extent not reimbursed, the cost of medical care as defined in sec-
 5 tion 213(d) of the Internal Revenue Code, incurred or paid by the claimant
 6 and, if married, the claimant's spouse, may be deducted from income. To
 7 the extent not reimbursed, personal funeral expenses, including prepaid
 8 funeral expenses and premiums on funeral insurance, of the claimant and
 9 claimant's spouse only, may be deducted from income up to an annual maxi-
 10 mum of five thousand dollars (\$5,000) per claim. "Income" does not include
 11 veterans disability pensions received by a person described in subsection
 12 (1)(e) who is a claimant or a claimant's spouse if the disability pension
 13 is received pursuant to a service-connected disability of a degree of forty
 14 percent (40%) or more. "Income" does not include dependency and indemnity
 15 compensation or death benefits paid to a person described in subsection
 16 (1) of this section by the United States department of veterans affairs and
 17 arising from a service-connected death or disability. "Income" does not
 18 include lump sum death benefits made by the social security administration
 19 pursuant to 42 U.S.C. section 402(i). Documentation of medical expenses
 20 may be required by the county assessor and state tax commission in such form
 21 as the county assessor or state tax commission shall determine. "Income"
 22 shall be that received in the calendar year immediately preceding the year
 23 in which a claim is filed. Where a claimant and/or the claimant's spouse
 24 does not file a federal tax return, the claimant's and/or the claimant's
 25 spouse's federal adjusted gross income, for purposes of this section, shall
 26 be an income equivalent to federal adjusted gross income had the claimant
 27 and/or the claimant's spouse filed a federal tax return, as determined by the
 28 county assessor. The county assessor or state tax commission may require
 29 documentation of income in such form as each shall determine, including, but
 30 not limited to: copies of federal or state tax returns and any attachments
 31 thereto; and income reporting forms such as the W-2 and 1099.

32 For determining income for certain married individuals living apart,
 33 the provisions of sections 2(c) and 7703(b) of the Internal Revenue Code
 34 shall apply.

35 (6) "Occupied" means actual use and possession.

36 (7) "Owner" means a person holding title in fee simple or holding a cer-
 37 tificate of motor vehicle title (either of which may be subject to mortgage,
 38 deed of trust or other lien) or who has retained or been granted a life estate
 39 or who is a person entitled to file a claim under section 63-702, Idaho Code.
 40 "Owner" shall also include any person who:

41 (a) Is the beneficiary of a revocable or irrevocable trust which is the
 42 owner of such homestead and under which the claimant or the claimant's
 43 spouse has the primary right of occupancy of the homestead; or

44 (b) Is a partner of a limited partnership, member of a limited liabil-
 45 ity company or shareholder of a corporation if such entity holds title
 46 in fee simple or holds a certificate of motor vehicle title and if the
 47 person holds at least a five percent (5%) ownership in such entity, as
 48 determined by the county assessor; or

49 (c) Has retained or been granted a life estate.

"Owner" includes a vendee in possession under a land sale contract. Any partial ownership shall be considered as ownership for determining initial qualification for property tax reduction benefits; however, the amount of property tax reduction under section 63-704, Idaho Code, and rules promulgated pursuant to section 63-705, Idaho Code, shall be computed on the value of the claimant's partial ownership. "Partial ownership," for the purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person or where the homestead is held by an entity, as set forth in this subsection, but more than one (1) person has the right of occupancy of such homestead. A person holding either partial title in fee simple or holding a certificate of motor vehicle title together with another person but who does not occupy the dwelling as his primary dwelling place, shall not be considered an owner for purposes of this section, if such person is a cosignatory of a note secured by the dwelling in question and at least one (1) of the other cosignatories of the note occupies the dwelling as his primary dwelling place. The combined community property interests of both spouses shall not be considered partial ownership so long as the combined community property interests constitute the entire ownership of the homestead, including where the spouses are occupying a homestead owned by an entity, as set forth in this subsection, and the spouses have the primary right of occupancy of the homestead. The proportional reduction required under this subsection shall not apply to community property interests. Where title to property was held by a person who has died without timely filing a claim for property tax reduction, the estate of the deceased person shall be the "owner," provided that the time periods during which the deceased person held such title shall be attributed to the estate for the computation of any time periods under subsection (8) (a) or (8) (b) of this section.

(8) (a) "Primary dwelling place" means the claimant's dwelling place on January 1 or before April 15 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates to be his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 or before April 15 and:

- (i) At least six (6) months during the prior year; or
- (ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or
- (iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant for less than one (1) year. The county assessor may require written or other proof of the foregoing in such form as the county assessor may determine.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. Payment of utilities shall not be payment of a consideration to occupy the

1 dwelling. A claimant's spouse who resides in a care facility shall be
2 deemed to reside at the claimant's primary dwelling place and to be a
3 part of the claimant's household. A care facility is a hospital, nurs-
4 ing facility or intermediate care facility for people with intellectual
5 disabilities as defined in section 39-1301, Idaho Code, or a facility
6 as defined in section 39-3302(14), Idaho Code, or a dwelling other than
7 the one upon which the applicant makes application where a claimant who
8 is unable to reside in the dwelling upon which the application is made
9 lives and receives help in daily living, protection and security.

10 (c) The provisions of this subsection shall be read and interpreted in
11 a manner that gives full effect to the provisions of section 63-602G(7),
12 Idaho Code.